WP(C) 2254/2007
BEFORE
THE HON'BLE MR. JUSTICE IA ANSARI
JUDGMENT & ORDER (ORAL)

Fancy Bazar Municipal Market, established in the year 1905, was completely gutted by devastating fire, which took place on 22.02.1989. The fire victims including the vendors, who were carrying on their business within the said market, formed several associations, one of such associations being the Guwahati Municipal Corporation Market Dealers' Central Association, which is registered as a society under the Societies Registration Act. Many of the fire victims came to this Court with writ applications, made under Article 226 of the Constitution of India, seeking issuance of writ(s) commanding the Guwahati Municipal Corporation to provide the fire victims with space and shops within the said market complex. The said Guwahati Municipal Corporation Market Dealers' Central Association too filed a writ petition, which gave rise to Civil Rule No. 281/1989. A Division Bench of this Court, on 03.04.1989, in Civil Rule No. 281/1989, passed certain directions to the State Government and the Guwahati Municipal Corporation (in short, 'the GMC'). This was followed by a writ petition, which was filed by M/s Das Tea Company, and this writ petition gave rise to Civil Rule No. 5290/1998, whereby M/S. Das Tea Company sought for, inter alia, direction to the GMC to accommodate the petitioner within the said market. Thereafter, the said association filed another writ petition, which gave rise to WP(C) No. 4686/2000, whereby certain directions with regard to the space to be provided to the members of the said association were sought for. Both these writ petitions, namely, WP(C) No.5290/98 and 4686/2000, were disposed of by a common judgment and order, dated 11.10.2002. The relevant observations made, and the directions given, in the judgment and order, dated 11.10.2002 aforementioned, read as under:

11. In the facts and circumstances of the case, both the writ petitions are proposed to be disposed of with the direction that the Corporation shall, within a period of three months from today, finalize the list of fire victims who were doing business with licence/authority from the Corporation on or immediate before the date of the fire incident. The list shall include the names of those fire victims who were also in possession and doing business despite expiry of their licenced tenancy. The first category of fire victims will be those who were in business having valid and subsisting licence/authority. They will be entitled to allotment of rooms/stalls on priority. The second category shall consist of those fire victims who were in possession though their licence/tenancy were not in force. The allotment of rooms to the second category will have to be made after formalizing their licence/tenancy in accordance with the provisions of the Guwahati Municipal Corporation Act and the bye-laws framed thereunder.

2. Following the directions given in the judgment and order, dated 11.10.2002, aforementioned, the Standing Assessment, Market & Trade Committee (in short, 'the SAMTC'), adopted, in its meeting held on 03.11.2004, some resolutions. The resolution No. 4 is of great relevance and, is, therefore, reproduced hereinbelow:

Resolution No. 4.

The SAMTC has also discussed about the present compact position of the market whereupon a common view, it appears to us that some retail fruit sellers and other hawkers are unauthorisedly occupying the front side space near the entrance of the new Fancy Bazar Market and unless they are shifted to some other convenient place, then in one hand, the frontal position of the market will not have good look and on the other hand, the retail sellers will be rendered jobless. As such, in the interest of justice towards such small retail fruit sellers and also to protect their source of livelihood the SAMTC thus opined that in order to maintain traffic and pollution free environment in the market complex and to allow easy access in the market, the retail fruit sellers including other hawhers, whoever they may be, shall be accommodated in the surrounding open space area of the market on the following conditions: -

a) Such retail seller shall pay a monthly rent of Rs.800/- (Rupees eight hundred);
b) The retail sellers shall not sublet one's allotted space to someone else. If so happens, then accommodated as provided shall stand cancelled forthwith.
c) Allotment will be of purely temporary nature as per terms and conditions fixed by GMC and allotment will be given on receipt of D.D. and R.F. of Rs. 5,000/- (Rupees five thousand) and Rs. 500/- (Rupees five hundred) respectively.

3. In yet another meeting, held on 17.12.2004, the SAMTC adopted some resolutions. Out of the resolutions, so adopted, resolution Nos. 2, 3 and 4 are of some relevance and are, therefore, reproduced hereinbelow:

Resolution No. 2.

Only the fruit vendors will be allowed to occupy the space in L-pattern on one side along the railings of the newly constructed building.

Resolution No. 3.

The road along Dewanpatty and M.M. Road will be made free by shifting the fruit vendors to the space near the inner railings and that the inner railings along T.R. Phukan Road and M.S. Road will be kept free.

Resolution No. 4.

No other business, other than fruit sellers will be allowed in respect of (2) above.

4. In course of time, Writ Petition No. 8712/2005, which was filed by one Sunil Mandal & another, was disposed of, on 27.03.2006, with directions to the Guwahati Municipal Corporation to give effect to its resolution No. 4 adopted, on 03.11.2004, by SAMTC. This writ petition was followed by another writ petition, which was filed by the Fancy Bazar Guwahati Municipal Market Fruit & Vegetable Traders Association and this writ petition gave rise to WP(C) No.3651/2006. In WP(C) No.3651/2006 aforementioned, the Fancy Bazar Guwahati Municipal Market Fruit & Vegetable Traders Association challenged the resolution adopted by SAMTC in its meeting held on 17.12.2004. This writ petition was, however, withdrawn and disposed of on 21.03.2007. But, while disposing of the writ petition on 21.03.2007, the Court made it clear that there would be no legal impediment, on the part of the GMC, to act in accordance with the impugned resolutions, i.e., resolutions, dated 17.12.2004. After the order, dated 21.03.2007, was passed, another writ petition was filed by the Greater Guwahati Retail Fruit Vendors' Association and this writ petition gave rise to WP(C) No. 3817/2007. This writ petition (WP(C) No.3817/2007) was, however, closed by order, dated 21.06.2007, with observations that the directions, given by the Court in the order, dated 27.03.2006, passed in WP(C) No. 8712/2005, shall be complied with by the parties concerned. In compliance with the directions issued by the Court in its order, dated 26.03.2006, when a Public Notice was published by the Guwahati Municipal Corporation, on 21.04.2007, inviting applications for allotment of space inside the said market, the present petitioner association, which is also registered as a Society under the Societies Registration Act, and was earlier known as Guwahati Municipal Corporation Market Dealers' Central Association, has filed the present writ petition. By making this writ petition, the petitioner association challenges the said Public Notice. During pendency of this writ petition, the Greater Guwahati Retail Fruit Vendors' Association has got itself impleaded as a respondent in the present writ petition.

5. I have heard Mr. B. Sinha, learned counsel for the writ petitioner, and Mr. S. Chamaria, learned Standing counsel for the GMC. I have also heard Mr. A. K. Purkayastha, learned counsel, appearing on behalf of the private respondent, namely, Greater Guwahati Retail Fruit Vendors' Association.

6. As the subject-matter of challenge, in the present writ petition, is the Public Notice, dated 21.04.2007, this Court would keep itself completely confin

ed to the subject-matter of the present writ petition.

7. While considering the present writ petition, what needs to be noted is that the resolutions, adopted by SAMTC, on 17.12.2004, are not under challenge in the present writ petition. In fact, the writ petitioners seek to enforce the resolutions, adopted on 17.12.2004, and their grievance is that the impugned Public Notice, dated 21.04.2007, is in violation of the resolutions, adopted on 17.12.2004. Responding to the challenge, so posed to the said Public Notice, the Guwahati Municipal Corporation has submitted to the effect, inter alia, that in terms of the Public Notice, altogether 61 applications were received and upon interviewing them, one of the applicants was found to be the owner of a tea-stall and, hence, he has been excluded from the list, which has, now, been prepared. This list of the applicants, selected pursuant to the Public Notice, dated 21.04.2007, contains names of 60 applicants, who are all fruit vendors. To a pointed query made by this Court, Mr. Chamaria, learned Standing Counsel, GMC, clearly submits that fruit vendors include all those, who were selling fruits either as a shop-keeper within the said market or as hawkers.

8. In the backdrop of what have been indicated above, when I revert to the resolutions, adopted on 03.11.2004, what transpires is that the Guwahati Municipal Corporation resolved, on 03.11.2004, to allot open space surrounding the newly constructed market to fruit vendors including other hawkers. But, whether the term, 'other hawkers' included exclusively fruit vendors or not, is a question, which is not under challenge in the present writ petition and this Court, therefore, expresses no opinion as regards the question as to whether or not the resolution No.4, dated 03.11.2004, was meant to allot space to only such hawkers, who were fruit vendors. What is also of great significance to note is that the resolution, dated 17.12.2004, reflects that the Guwahati Municipal Corporation decided to allot open space inside their market, which forms the pattern of the alphabet 'L'. It is the case of the Guwahati Municipal Corporation that while seeking to allot space in pursuant to the impugned Public Notice, dated 21.04.2007, it has followed the resolutions dated 17.12.2004. In this regard, what needs to be pointed out is that though the Public Notice, dated 21.04.2007, mentions that the applicants may be permitted to use the space measuring in 4' X 4' each, Mr. Chamaria, learned Standing Counsel, GMC, clarifies to this Court that the open space, referred to in the impugned notice, will remain confined to the space, which falls within the said 'L- pattern' area.

9. In view of the above clarifications offered, on behalf of the GMC, there remains no serious challenge to the Public Notice, dated 21.04.2007, so long as the allotment to be made by the GMC remains confined, and falls within, the area mentioned in the resolutions, dated 17.12.2004. There is also no dispute that the 60 applicants, who have been selected by the Guwahati Municipal Corporation, are all fruit vendors.

10. As far as private respondents, namely, Greater Guwahati Retail Fruit Association is concerned, it has not been able to show that in publishing the impugned notice and/or in making selection, the GMC has ignored or violated any of the directions of this Court and/or the GMC's resolutions, which form the subject-matter of this writ petition.

11. Because of what have been indicated above, there survives nothing for decision of this Court except that this Court, now, directs the Guwahati Municipal Corporation that while making allotment to the said 60 selected applicants, the Guwahati Municipal Corporation will not go beyond the space, which the resolution, dated 17.12.2004, permit. Subject to the conditions, so imposed, the Guwahati Municipal Corporation is allowed to make allotment of space to their selected applicants. It is further made clear that in the resolution No.4, dated 03.11.2004, the Guwahati Municipal Corporation had decided to make allotment inside the market for the purpose of facilitating access to the market, for creating an en

vironment-friendly atmosphere and also for improving the overall look of the market. Hence, while making allotment to their said 60 selected applicants, the Guwahati Municipal Corporation shall ensure that the concern expressed by the SAMTC in its resolution No.4, dated 03.11.2004, are not ignored.

12. Before parting with this writ petition, it is, however, made clear that the directions, given to the Guwahati Municipal Corporation permitting it to make allotment in terms of the resolutions, dated 17.12.2004, have been given, in this writ petition, on the basis of the challenge, which was posed in this writ petition, and shall have no bearing in any future allotment(s) of space to be made by the GMC.

13. With the above observations and directions, this writ petition shall stand disposed of.

14. No order as to cost.